

### **REMARKS**

Applicants request reconsideration and allowance in view of the following remarks.  
Claims 1, 3, 4, 6-45 are pending, with claims 1, 15, and 25 being independent.

#### **Eichstaedt in view of Short and further in view of Joiner rejection**

Claims 42-44 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Eichstaedt (U.S. Patent Number 6,662,230) in view of Short (U.S. Patent Number 6,636,894), and further in view of Joiner (U.S. Patent Number 6,742,128). Applicants respectfully request reconsideration and withdrawal of this rejection because Joiner is not prior art under 35 U.S.C. 103(a).

Joiner has an application filing date of August 28, 2002. As such, the earliest priority date that can be attributed to Joiner is August 28, 2002.

Applicants application was filed on September 20, 2000 and claims the benefit of a provisional patent application filed on August 24, 2000. Applicants' application is entitled to at least the provisional application filing date of August 24, 2000, which is earlier than the August 28, 2002 date of Joiner. Therefore, Joiner is not prior art under § 102(e) and 103(a).

For at least the above reasons, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 42-44, or, alternatively, issuance of a new Office Action.

#### **Eichstaedt in view of Short rejection**

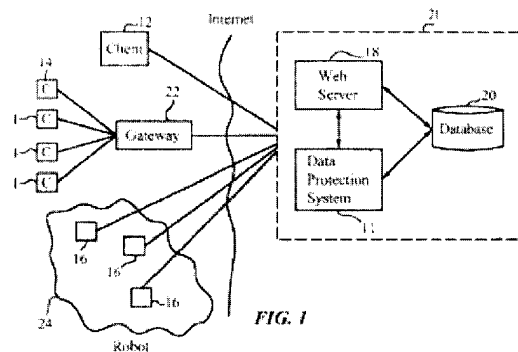
Claims 1, 3, 4, and 6-37 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Eichstaedt (U.S. Patent Number 6,662,230) in view of Short (U.S. Patent Number 6,636,894). Applicants respectfully request reconsideration and withdrawal of this rejection because neither Eichstaedt, Short, nor any proper combination of the two describe or suggest the features of independent claims 1, 15, and 25, as described below.

For example, independent claim 1 recites, among other features, monitoring for connection transactions between multiple access requestors and access providers using a switching component connected to the access providers and denying access by an attacking

access requestor to the access providers when a number of connection transactions initiated by the attacking access requestor through the switching component exceeds a configurable threshold number during a first configurable period of time. Applicants submit that neither Eichstaedt, Short, nor any proper combination of the two describe or suggest at least these features.

In particular, the Office Action asserts that Eichstaedt teaches a switching component and simultaneously points to elements 22 and 11 of Fig. 1 of Eichstaedt. See Office Action, page 3. Applicants submit that gateway 22 in Eichstaedt cannot by itself be the switching component of claim 1. Moreover, the combination of gateway 22 with data protection system 11 does not make sense in the context of Eichstaedt.

Specifically, as can be seen from Fig. 1 of Eichstaedt, gateway 22 is not a part of the web system 21. Instead, gateway 22 is part of a remote corporate network trying to access server 18 within the system 21. In fact, gateway 22 is the cause of the problem Eichstaedt is attempting to solve – as Eichstaedt explains, clients located behind corporate gateway 22



all appear as a single IP source to the system 21, which makes IP tracking difficult:

Corporate clients 14 usually obtain access through a gateway server 22 on a local area network (LAN), which may limit their access to approved Web sites.

For clients 14, however, server 18 can determine only the IP address of gateway 22. Subnets within the LAN have distinct addresses, but these are not available to server 18. In most cases, requests from clients 14 appear to be from a single source.

Col. 5:

There is no motivation or suggestion in Eichstaedt to combine data protection system 11 and gateway 22 in a single component, as Eichstaedt attempts to solve the problems caused by gateway 22 and does not rely on gateway 22 as part of its invention.

Moreover, the Office Action cannot properly rely on a combination of gateway 22 and data protection system 11 to show “a switching component connected to the access providers” (system 21, as asserted by the Office Action). As seen from Fig. 1, data protection system 11 is itself a part of system 21. See Fig. 1, Col. 5:62-65, Col. 6:39-61. Hence, at least as interpreted by the Office Action, data protection system 11 must be a part of the access provider (system

21), not a part of the switching component. Thus, data protection system 11 is not “connected to access providers,” as required by claim 1, since it is a part of the access provider system. For these reasons, data protection system 11 cannot be a part of “a switching component connected to the access providers,” at least in light of the position taken by the Office Action.

In summary, combining elements 22 and 11 to show “a switching component” is improper. As previously explained, there is no teaching, motivation, or suggestion in Eichstaedt to combine data protection system 11 and gateway 22 in a single component. Moreover, when pointing to an element in prior art that allegedly “anticipates” an element of the claim, the Office Action **must arrange elements as required by the claim**. MPEP § 2131 (citing *In re Bond*, 91 0 F.2d 83 1, 15 USPQ2d 1566 (Fed. Cir. 1990)) (emphasis added). The Board of Patent Appeals and Interferences consistently endorsed the need to avoid arbitrarily combining elements within a single prior art reference. *Ex parte Masayuki Inoue*, 2003 WL 25284183 (Bd. Pat. App. & Int. 2003) (reversing a rejection that was “based on picking and choosing elements described in separate embodiments of the reference, without presenting any evidence to show a rationale from the prior art for combining the features in such a way as to meet the terms of the invention that is claimed.”); *Ex parte Gennaro A. Cuomo*, 2003 WL 23013 130 (Bd. Pat. App. & Int. 2002); *Ex parte Pierre Cote*, 2007 WL 499904 (Bd. Pat. App. & Int. 2007); *Ex parte Didier Daniel Claude Bardon*, 2006 WL 2523699 (Bd. Pat. App. & Int. 2003).

For at least the above reasons, Eichstaedt does not teach or suggest “a switching component connected to the access providers.”

In addition, Eichstaedt does not describe or suggest monitoring for connection transactions between multiple access requestors and access providers using a switching component connected to the access providers and denying access by an attacking access requestor to the access providers when a number of connection transactions initiated by the attacking access requestor through the switching component exceeds a configurable threshold number during a first configurable period of time, as recited in independent claim 1.

Notably, the Office Action concedes that Eichstaedt does not describe or suggest monitoring connection transactions with a plurality of access providers. See Office Action at page 3. The Office Action relies on Short for this feature.

As explained in the previous response, Short fails to remedy the deficiencies of Eichstaedt. Specifically, as shown in Fig. 1, Short describes a computer system 10 including a gateway device 12 and a router 18 that enable a plurality of computers 14 access to a plurality networks 20 or other online services 22. Col. 6, lines 9-45. Although Short may describe a computer system that provides multiple user computers access to a plurality of networks, Short fails to describe or suggest monitoring for connection transactions between the multiple user computers and the plurality of networks using a switching component and denying access by one of the user computers to the plurality of networks when a number of connection transactions initiated by the user computer through the switching component exceeds a configurable threshold number during a first configurable period of time. Instead, Short merely describes facilitating connections to a plurality of networks or online services without monitoring the connections and denying access when the number of the connections exceeds a threshold. Thus, Short fails to describe or suggest monitoring for connection transactions between multiple access requestors and access providers using a switching component connected to the access providers and denying access by an attacking access requestor to the access providers when a number of connection transactions initiated by the attacking access requestor through the switching component exceeds a configurable threshold number during a first configurable period of time, as recited in independent claim 1.

Even assuming, arguendo, that a proper combination of Eichstaedt and Short includes a plurality of the web servers described in Eichstaedt, Applicants respectfully disagree that the proposed combination meets the limitations of independent claim 1.

In particular, assuming that a proper combination of Eichstaedt and Short includes a plurality of the web servers, Applicants submit that, in the proposed combination, each of the plurality of Eichstaedt web servers would act in a manner similar to the web server described in Eichstaedt. As discussed above, the web server 18 of Eichstaedt monitors for connection transactions between multiple client computers 12 and 14 and the single web server 18 and protects only the single web server 18 from abusive clients that request objects from the single web server 18 too frequently. Therefore, in the proposed combination, each single web server would monitor its own connection transactions without regard for connection transactions of other web servers. Accordingly, each specific web server included in the proposed combination

would deny access to a requestor only when the specific web server has detected a number of connection transactions to the specific web server that exceeds a threshold. Based on the teachings of Eichstaedt, none of the web servers would monitor connection transactions between multiple access requestors and access providers, as claimed. Therefore, even if the proposed combination were made, it would fail to describe or suggest monitoring for connection transactions between multiple access requestors and access providers using a switching component connected to the access providers and denying access by an attacking access requestor to the access providers when a number of connection transactions initiated by the attacking access requestor through the switching component exceeds a configurable threshold number during a first configurable period of time, as recited in independent claim 1.

The impact of differences between the technology in the proposed combination of Eichstaedt and Short and the subject matter of claim 1 is perhaps best illustrated by an example. If a particular client computer is making too many requests (above the set threshold) to a specific web server, then the web server will recognize that the client computer's requests passes the set threshold and will refuse the client computer access to the specific web server. Now assume that the client computer makes many requests (but less than a threshold) to a first web server and that the client computer concurrently makes many requests (but less than the threshold) to a second web server. The first web server will recognize that the client computer's requests to the first web server do not exceed the set threshold, and the second web server will recognize that the client computer's requests to the second web server also do not exceed the set threshold. Therefore, both the first web server and the second web server will allow the client computer continued access, even if the total aggregated number of the client computer's requests to the first web server and the second web server exceeds the set threshold. That is, the first web server makes access decisions for the first web server without regard for the client computer's interactions with the second web server (or any other web server).

By contrast, the subject matter of claim 1 would take into account the interactions of the client computer with both the first and second web server. And, if the total number of the client computer's requests passes the set threshold, irrespective of to which server the requests are directed, the client computer will be denied access to both the first web server and second web server.

Accordingly, the proposed combination of Eichstaedt and Short fails to describe or suggest monitoring for connection transactions between multiple access requestors and access providers using a switching component connected to the access providers and denying access by an attacking access requestor to the access providers when a number of connection transactions initiated by the attacking access requestor through the switching component exceeds a configurable threshold number during a first configurable period of time, as recited in independent claim 1.

For at least these reasons, Applicants respectfully request reconsideration and withdrawal of the rejection of independent claim 1 along with its dependent claims.

Independent claims 15 and 25, although different in scope than independent claim 1 and each other, recite features similar to the above recited features of independent claim 1. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of independent claims 15 and 25, along with their dependent claims, for at least the reasons presented above with respect to independent claim 1.

Claims 38-45 each depend directly or indirectly from independent claim 1. At least for the reason of that dependency and the reasons noted above with respect to independent claim 1, Applicants submit that claims 38-45 are allowable.

### **Conclusion**

It is believed that all of the pending issues have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this reply should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this reply, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Applicant : Joseph Barrett et al.  
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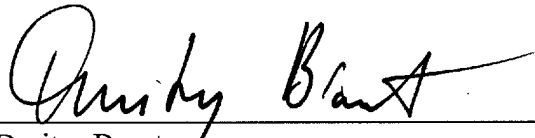
Attorney's Docket No.: 06975-131001 / Security 08

Applicants submit that all claims are in condition for allowance.

No fees are believed due at this time. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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